No. 417

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

DISTRICT OF COLUMBIA, *Petitioner*

v.

CLIFFORD G. BECKHAM, MABEL V. BECKHAM, *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO ISSUANCE OF A WRIT OF CERTIORARI.

LESLIE C. GARNETT,
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BRIEF FOR RESPONDENTS IN OPPOSITION TO ISSUANCE OF A WRIT OF CERTIORARI.

Respondents oppose the issuance of a writ of certiorai on the following grounds:

FIRST. This court will not ordinarily review a judgment of the United States Court of Appeals of the District of Columbia, based upon a local statute confined in its operation to the District of Columbia.

SECOND. The sole question involved in this case is the domicile of the respondents and this court will not review the findings as to this fact by the United States Court of Appeals.

THIRD. The judgment of the United States Court of Appeals for the District of Columbia is plainly right that

the finding of the Board of Tax Appeals that the respondents were domiciled in the District of Columbia on December 31, 1940 was "clearly wrong".

ARGUMENT.

1. This court will not reexamine the judgment of the United States Court of Appeals in this case.

Section 2(a) of the D. C. Income Tax Act, 53 Stat. 1087, Chap. 367, D. C. Code 1940, Title 47 Sec. 1502(a) is a local statute confined to the District of Columbia. It has no force and effect outside of the District of Columbia and has no general application. No Federal question is involved in the construction of this statute. The decision of the highest court of the District of Columbia is entitled in such case to the same dignity and conclusiveness as to the judgment of the courts of last resort in the several states.[1]

Only in exceptional cases will this court review a determination of a local question by the United States Court of Appeals for the District of Columbia. The jurisdiction of this court does not extend to cases where the Act of Congress construed by the Court of Appeals for the District of Columbia is purely local, but that jurisdiction extends only to those laws having a general application through the United States.[2]

2. The sole question involved in this case is the domicile of the respondents and this court will not review the findings as to this fact by the United States Court of Appeals.

The quotation in the petition (p. 11) from *District of Columbia* v. *Murphy*, 314 U. S. 440, 455, to the effect that "the question of domicile is a difficult one of fact" pre-

[1] *Busby* v. *Electric Utility Employees Union*, 323 U. S. 72, 77.

[2] *American Security & Trust Co.* v. *District Commissioner*, 224 U. S. 491.

cludes a review here of the findings of fact in the court below.

In *District of Columbia* v. *Pace*,[3] Mr. Justice Jackson, who wrote the earlier opinion in the *Murphy* case, specifically pointed out in his opinion (p. 701), "We did not take this case to determine where Mr. Pace was domiciled", but added that certiorari was granted to determine the scope of the review of the decisions by the Board of Tax Appeals of the District of Columbia. This decision, holding that the United States Court of Appeals had power to review the facts, fully justifies the language of the Court of Appeals in this case (R. 25) as follows:

> "In view of *District of Columbia* v. *Pace*, 320 U. S. 698 (1944), the sole question before us, except that arising from a contention noted below of counsel for the District against the *Collier* decision, is whether or not under the evidence before the Board its finding is clearly wrong."

The court below having determined under the evidence before the Board of Tax Appeals that its finding was "clearly wrong", this court will not review this finding, for as said in the *Pace* case, supra, (p. 703):

> "The Court of Appeals therefore had power to set aside the determination of the Board of Tax Appeals if convinced, as it was, that the Board was clearly wrong. We are not called upon to separate factual from legal grounds of decision and to determine if reversal of the Board of Tax Appeals by the Court of Appeals could stand on questions of law alone. The judgment therefore is affirmed."

This language is conclusive that this court will not review the facts as found by the court below.

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[3] *District of Columbia* v. *Pace*, 320 U. S. 698.

3. The judgment of the United States Court of Appeals is plainly right.

The authorities heretofore cited herein would seem to preclude the reexamination of the judgment below. However, such an examination would show that it is plainly right.

The petitioner attempts to bring this case within the provisions of Rule 38(c) by contending that the United States Court of Appeals has not given proper effect to the decision in the *District of Columbia* v. *Murphy*, supra, and that the decision is in conflict with its prior decisions following that case. It is enough to point out that its decision in this case is in accord with *D. C.* v. *Pace*, supra, which followed the *Murphy* case, where this court specifically said that they did not grant certiorari to determine where the taxpayer was domiciled, but to determine the scope of review of decisions of the Board of Tax Appeals by the Court of Appeals, upholding the power of the court below to determine the facts.

The United States Court of Appeals for the District of Columbia expressly "bottomed" its conclusion that Pace was domiciled in the District of Columbia upon the opinion of this Court in the *Murphy* case. This being true, it can hardly be contended on behalf of the petitioner that the decision in the instant case is in conflict with its prior decisions following the *Murphy* case. It is contended for the petitioner that the *Murphy* case placed the burden of proof upon the taxpayer to establish domicile outside of the District if he is to escape tax (Petition p. 11). This again is a mere matter of proof and a question of the sufficiency of the evidence, a question of fact which this court will not examine into because it raises no question of law.

The court below found the following facts (R. 26):

> "Beckham, a lawyer, came with his wife to the District of Columbia in 1928 from Texas to accept a position in the Bureau of Internal Revenue which he still occupies. He and Mrs. Beckham had previously re-

sided in Fort Worth. In the District the Beckhams have lived in a rented apartment. They own no real estate in the District but have had bank accounts. They own two parcels of real estate in a Forth Worth suburb and a cemetery lot in Fort Worth. They have paid poll taxes in Texas since coming to the District until becoming sixty-five years of age—Beckham's present age. They have voted in Texas at every general election. They have not returned to Texas during their residence in Washington. They have paid all federal income taxes at Dallas, Texas. They have no church membership in Washington, although they occasionally attend church and make small contributions. Their only church membership is in the First Church of Christ, Scientist, in Boston. Beckham has retained membership in fraternal organizations such as the Shrine, the Blue Lodge, the Consistory and the Scottish Rite in Fort Worth. They have contributed to charities in the District and not in Texas. When Beckham retires, which he is now eligible but not compelled to do, he expects to return to Fort Worth. The Beckhams have claimed Fort Worth as their residence ever since they have been in Washington. If Beckham were forced to retire prior to reaching the age of 76, and were offered a position in the District at a like salary, and if the combination of that salary with his retirement pay were enough better than what he could anticipate making in Texas he might take it. If forced out of the Government service at 70 he will go back to practice law at Fort Worth. If he retires at 76 he does not know what he will do."

In the light of these facts, while the husband is under appointment in the Federal service in Washington, he did not establish a permanent place of abode here and abandon their domicile of origin in Texas by merely renting an apartment here.

The language of Mr. Justice Jackson in the *Murphy* case, quoting the chairman of the Senate Conferees, is controlling in this case (p. 450):

"Mr. President, I now call attention to the fact that the individual income tax is imposed only on those

> domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia."

and again (p. 454):

> "We hold that a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in the Government service. A contrary decision would disregard the statements made on the floor of Congress as to the meaning of the statute, fail to give proper weight to the trend of judicial decisions, with which Congress should be taken to have been cognizant, and result in a wholesale finding of domicile on the part of Government servants quite obviously at variance with congressional policy. Further, Congress did not intend that one living here indefinitely while in the Government service be held domiciled here simply because he does not maintain a domestic establishment at the place he hails from."

Counsel for the petitioner contend that the answer of the taxpayer to hypothetical questions as to what he would do about returning to Texas at the end of his government service evidenced no fixed intention to return to the place of nativity at the end of government service. As to this, the court below rightly said (R. 27) that "these conditional answers to hypothetical questions constitute no substantial evidence that the Beckhams" had not a fixed intention at the end of his government service to return to their previous abode in Texas.

The court below further said:

> "Any honest witness—and no question of the veracity of the Beckhams is here raised—testifying to a fixed intention to return to a former abode at the end

> of Government service would be bound to admit, if questioned, that he *might* remain in the District if at some future time it was made substantially to his advantage to do so; or that if he were to reach an advanced age before his Government service ended, he might not depart. If such speculative answers to hypothetical questions warrant disregard of convincing circumstantial evidence and direct statements as to past and present domiciliary intent, then the rule of the *Collier* case is rendered nugatory. We think such questions and answers insufficient to bar a former domicile in the face of uncontradicted and unequivocal testimony of a fixed intent throughout the period of the Government service in the District to return to the former abode at the end of such service."

The weight of this testimony and the ultimate fact was for the determination of the U. S. Court of Appeals for the District of Columbia, and its finding is conclusive.

The petitioner can find no support in the terms of the District of Columbia Income and Franchise Tax Act of 1947, Art. 1, Public Law 195, 80th Congress, approved July 16, 1947, cited in the petition (p. 19), which specifically provides that the domicile of the government employee for any taxable year shall be in the state which he expressly declares to be the state of his domicile.

The conference report cited for the petitioner (Petition p. 20) evidences that the Senate had undertaken to repeal the existing law and to exempt from income taxes in the District of Columbia only such officers of the government as were appointed by the President and confirmed by the Senate, leaving all government employees who maintained a place of abode within the District for more than seven months subject to an income tax.

Congress refused to pass the Senate provision and enacted a statute which defines "resident" and specifically provides that the bona fide declaration of the taxpayer expressly fixes his domicile. Thus Congress now expressly

exempts from income taxes government employees who bona fide claim their domicile in the states of their origin.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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